

**United States Department of Energy  
Office of Hearings and Appeals**

In the Matter of:      Diversified Power                    )  
                                  International, LLC                    )  
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Filing Date:            August 9, 2018                    )                    Case No.: EXC-18-0003  
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Issued: December 14, 2018

**Decision and Order  
Application for Exception**

On August 9, 2018, the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE or the Department) received from Diversified Power International (DPI) an Application for Exception to the applicable provisions of the Energy Conservation Program: Energy Conservation Standards for Battery Chargers (Standards or Battery Charger Standards) published on June 13, 2016, at 81 Fed. Reg. 38265 and codified at 10 C.F.R. 430.32(z). DPI requests an exception to the applicability of the Standards, with respect to its products that are subject to DOE energy conservation standards, for up to three years while it develops compliant products. For the reasons discussed below, we will grant the Application for Exception, with limitations.

**I. Background**

The Energy Policy and Conservation Act of 1975, Pub L. No. 94-163 (42 U.S.C. § 6291 *et seq.*) (EPCA), initiated measures to increase the energy efficiency of certain products. The Energy Policy Act of 2005, Pub. L. No. 109-58, amended the EPCA by defining the term “battery charger” and directing the Department of Energy to set energy conservation standards for battery chargers or classes of battery chargers. 42 U.S.C. §§ 6291(32) and 6295(u)(1). The Energy Independence and Security Act of 2007 added definitions for standby and off modes and directed DOE to create test procedures for battery chargers to address those modes. 42 U.S.C. § 6295(gg)(1)(A)(ii)-(iii) and (2)(B)(i). The Department published final rules to this effect in 2009 and 2011. 74 Fed. Reg. 13318 (March 27, 2009); 76 Fed. Reg. 31750 (June 1, 2011). In 2010, DOE initiated rulemaking procedures to create efficiency standards for battery charger energy consumption. 74 Fed. Reg. 26816 (June 4, 2009). This rulemaking was completed in 2016 and codified at 10 C.F.R. 430.32(z), Energy Conservation Program: Energy Conservation Standards for Battery Chargers, *see also* 81 Fed. Reg. 38266 (June 13, 2016). Compliance with this regulation was required starting June 13, 2018.

A. Procedural History

When compliance with the Standards was required starting on June 13, 2018,<sup>1</sup> several of DPI's product lines<sup>2</sup> did not comply with those standards. DPI Response to Request for Information at 7 (Oct. 26, 2018) (Response). Consequently, DPI ceased manufacturing those products at that time. Memorandum of Telephone Conversation between Tony Trigiani, DPI, and Kristin L. Martin, Attorney, Office of Hearings and Appeals (October 29, 2018) (Memorandum). DPI filed an Application for Exception on August 9, 2018. Application for Exception. On October 24, 2018, DPI filed an Application for Stay of the applicable provisions of the Standards as applied to its affected product lines, pending a decision on its Application for Exception. *Diversified Power International, LLC*, Case No. EXS-18-0003 (2018). The OHA granted the Application for Stay on November 1, 2018. *Id.* Subsequent to the grant of the Stay, DPI submitted information in response to a request from the OHA, which narrowed the scope of the Application for Exception to five product lines: 12008-01, 1-24020-04, 1-24F020-04HF, 1-36018-04, and 1-42017-04. DPI Response to Second Request for Information (Dec. 4, 2018) (Second Response). These will be referred to by the five or six digit string (*e.g.*, "42017" instead of "1-42017-04").

## B. Factual Background

DPI is a manufacturer of battery chargers, among other products. Based in rural Tennessee, it employs just under 100 workers. Response at 8, 11. DPI makes almost exclusive use of American sourced materials, a fact that is a significant part of the company's marketing and brand identity. *Id.* at 8. It asserts that it is the only manufacturer of the affected products that sources such a large portion of its materials domestically. *Id.* at 6. In seeking an exception to the applicable provisions of the Battery Charger Standards, DPI contends that immediate compliance would force the company to permanently close its doors. *Id.* at 10–11.

DPI began working on its energy efficient products as early as 2009. Memorandum. In 2011, DPI built a "clean room," which was required for the manufacture of highly energy efficient battery chargers. *Id.* DPI has continued to improve this facility over the years, including adding new equipment as recently as 2018. *Id.* Its efforts have borne fruit, as evidenced by three of their affected product lines achieving compliant testing results prior to this decision. Exhibit 1 (Unit Energy Consumption (UEC) calculations by DOE's Office of Energy Efficiency and Renewable Energy).

In late 2015 or early 2016, DPI contracted to build a magnetics facility capable of manufacturing the parts required for fully compliant battery chargers. Memorandum. However, by early 2017, it became clear that the contractor was unable to perform, and DPI cancelled the contract. *Id.* In late 2017, DPI's affected products underwent testing for the California Energy Commission's (CEC) efficiency standards at Underwriter's Laboratory, an independent safety and compliance entity. *Id.* DPI inquired at that time as to whether its products met DOE's efficiency standards. *Id.* According

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<sup>1</sup> Compliance with the Standards is only required for battery chargers manufactured on or after June 13, 2018.

<sup>2</sup> Each "product line" includes all products grouped under the listing numbers given to them by the testing company Underwriter's Laboratory (UL), which are the numbers used in this decision to describe affected products. For instance, the DPI product line with the UL listing number 1-36018-04 includes DPI product models 1QB-36F014Q03-E01, 1RB-36F018E00-E00, and 1RB-36F018E03-E00, and many others.

to DPI, UL asserted that the DPI products it was testing would be DOE compliant if they were CEC compliant. *Id.* DPI continued developing higher efficiency products, completing software for a DOE compliant version of its Model 12925-02 chargers in December 2017. *Id.* This product, for which DPI already has orders, is scheduled to begin manufacture in December 2018. *Id.*; Second Response.

Three product lines account for about XX% of DPI’s net revenues. Second Response. Two of the three—24F020 and 36018—are affected product lines and together constitute roughly XX% of the company’s net revenues. *Id.* DPI’s profit margins are slim; its annual net income, at roughly XX% of its total income, is between XXXX and XXXX per year. Response: Income 2015-2016-2017 (Response: Income). DPI has XXXX cash on hand and XXXXXXXXX. Second Response.

DPI submitted a list of XX components required for compliant products that it cannot currently produce. Second Response. XXXXXXXXX and the cost of foreign sourced components was consistently higher, about XXXX per build, than the cost of in-house production of the same components at about XXXX per build. *Id.* DPI also supplied cost comparisons that factored in the cost of building facilities and purchasing equipment required to manufacture these components. *Id.* DPI estimates that the combined cost to build and equip its new facilities and produce 10,000 products would be about XXXX lower than the cost to only purchase those same components from foreign sources. *Id.* (comparing an Estimated Process Cost of XXXX with a Lowest Estimated Outsourced Cost of XXXX).

Of the five affected product model lines, three model lines are nearly compliant with the Standards, while two model lines remain well outside the Standards. The table below shows the UECs of the affected product lines, the MAX UECs allowed by the Standards, and the affected product lines’ percentage of MAX UEC. Exhibit 1.

Product Line	UEC	Max UEC	Percentage of Max UEC
12008	48.4	16.98	285%
24020	237.83	184.25	129%
24F020	178.12	170.14	104%
36018	208.52	196.44	106%
42017	257.46	236.76	109%

### C. Comments

We received one comment regarding DPI’s Application, submitted by a competitor. The comment stated an expectation that any relief granted would be extended to all manufacturers of battery chargers. This comment is addressed specifically below.

## II. Analysis

Section 504 of the Department of Energy Organization Act, 42 U.S.C. § 7194(a), authorizes the Secretary of Energy to make “such adjustments to any rule, regulation or order” issued under the EPCA, consistent with the other purposes of the Act, as “may be necessary to prevent special hardship, inequity, or unfair distribution of burdens.” The Secretary has delegated this authority to OHA, which administers exception relief pursuant to procedural regulations codified at 10 C.F.R. Part 1003, Subpart B. Under these provisions, persons subject to DOE’s energy efficiency standards, promulgated under DOE’s rulemaking authority, may apply to OHA for exception relief. *See, e.g., Diversified Refrigeration, Inc.*, OHA Case No. VEE-0079 (2001); *Amana Appliances*, OHA Case No. VEE-0054 (1999). The relevant regulations provide OHA the authority to grant exception relief “based on an assertion of serious hardship, gross inequity or unfair distribution of burdens.” 10 C.F.R. § 1003.20(a). The applicant has the burden of establishing the basis for exception relief. *See, e.g., Liebherr Canada Ltd.*, OHA Case No. EXC13-0004 (2013); *National Comfort Products*, OHA Case No. TEE-0065 (2010).

#### A. Special hardship

After reviewing the evidence before us, we conclude that DPI has demonstrated that it will suffer a special hardship if it is required to immediately comply with the Standards. The OHA “does not utilize a rigid definition of ‘special hardship.’” *Eaton Corporation*, OHA Case No. EXC-16-0004 at 7 (2016). Rather, DPI must only demonstrate that the Standards “would have such a negative impact upon it as to jeopardize its financial health or viability.” *Id.* at 24–25. We find that DPI has done just that.

DPI asserts that, but for exception relief, compliance with the Standards will result in its permanent closure. The detailed financial information DPI submitted supports this assertion through a combination of four factors. First, DPI has continued to purchase equipment necessary to create compliant products and has XXXX cash on hand to buoy it in lean times. Second, DPI’s profit margins are quite slim and a significant reduction would quickly put the company in the red. Third, XX% of DPI’s net revenue comes from two affected product lines. Finally, DPI does not have the capability at this time to manufacture certain components required to bring those most profitable product lines into compliance and the cost to purchase those components from foreign sources is higher than the combined cost to build the necessary facilities and manufacture the components.

Combined with tight profit margins and XXXX cash on hand, the loss of revenue from DPI’s two most profitable product lines—whether from halting production or from increased costs associated with foreign purchasing—would be immediately unsustainable for the company and it is reasonable to believe its claim that such loss would close its doors in a matter of weeks. Accordingly, we conclude that immediate compliance with the Standards will cause DPI to suffer a special hardship.

#### B. Discretionary Business Decisions

Much of DPI's hardship arises from its longstanding decision to create 100% American-made products. It is well-established that exception relief is not available "to alleviate a burden attributable to a discretionary business decision rather than the impact of DOE regulations." *DLU Lighting USA*, OHA Case No. EXC-12-0010 at 10 (2012). However, we conclude that DPI's decision to source domestically is not the primary cause of its hardship.

In *DLU Lighting USA*, the OHA determined that the applicant was not entitled to the exception relief granted to manufacturers of similar products because DLU had entered the market with its non-compliant product nearly three years after DOE implemented the applicable regulation. EXC-12-0010 at 10. Furthermore, the supply shortages that had affected DLU's competitors were common knowledge within the industry when DLU entered the market. *Id.* Moreover, DLU had not demonstrated that its business decision was a matter of business survival. *Id.* at 11 (citing *Viking Range Corp.*, OHA Case No. VEE-0075 (2000)). The OHA concluded that DLU's foray into the market was a discretionary business decision and, accordingly, denied exception relief.

The OHA has held that "the characterization of a decision as 'discretionary' does not preclude the grant of exception relief." *Sub-Zero Freezer Co., et al*, OHA Case Nos. VEA-0015, VEA-0016, VEA-0017 at 11 (2001). A business decision may still warrant relief if it was reasonable and prudent in light of the regulatory obligations known at the time the decision was made. *Id.* In *Sub-Zero Freezer Co.*, several companies appealed the OHA's decision granting exception relief in *Viking Range Corp.*, claiming that delays in Viking's ability to comply with regulatory standards were caused by a discretionary business decision to enter the market by outsourcing while working to develop its products. *Id.* at 10–11. We disagreed, finding that Viking's choices were reasonable under the circumstances.<sup>3</sup> *Id.* at 12. The business decision was not the "primary" cause of Viking's difficulty because the firm had attempted to purchase compliant products and moved to manufacturing only when purchase became impossible. *Id.* at 11–12. We held that the possibility that "a different set of decisions might have permitted Viking to meet the deadline does not mean that the path Viking chose precludes it from receiving exception relief." *Id.* at 12.

In contrast to the DLU's market entry, DPI's locally and domestically sourced production long predates the promulgation of the Standards. Furthermore, like Viking Range Corp., DPI has made significant efforts to fit its sourcing to meet the energy efficiency standards. It built its "clean room" in 2011, the year after DOE began the process of creating the Standards. Months before the final rule promulgating the Standards was published in 2016, DPI contracted to have a facility built at which it could manufacture compliant products. Thus, when deciding to maintain its business model, DPI took steps to comply with the Standards but unforeseen circumstances, namely issues with the contract, caused a delay. Had the contract been fulfilled, it is likely that DPI would not have faced any disruption and would not have needed to apply for exception relief. Therefore, the cause of DPI's regulatory woes is the 2017 breach of contract against DPI, not the decision to continue domestic sourcing. Far from placing itself in regulatory harm's way, DPI has continually

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<sup>3</sup> As the deadline for compliance approached, Viking's partners stopped supplying one of Viking's core product offerings. *Viking Range Corp.*, OHA Case No. VEE-0075 at 13–14. Viking purchased one of the partners' equipment and set about developing a compliant product, but needed to delay its compliance by six months. *Id.*

invested in its ability to comply with increasing energy efficiency standards while maintaining its commitment to manufacturing American-made products. For the foregoing reasons, we conclude that DPI's domestic sourcing is not a discretionary business decision that should preclude a grant of its Application for Exception.

### C. Extension to Other Manufacturers of Battery Chargers

Decisions on Applications for Exception are necessarily narrowly tailored to the facts surrounding the applicant's circumstances. For example, in 2012, the OHA granted exception relief to three applicants in the lighting industry. Although all three applicants were experiencing conditions affecting the entire industry, each application was decided based on the specific circumstances relating to that applicant. *Philips Lighting Company*, OHA Case No. EXC-12-0001 (2012); *GE Lighting*, OHA Case No. EXC-12-0002 (2012); *Osram Sylvania, Inc.*, EXC-12-0003 (2012). Similarly, subsequent exception applications by other lighting companies were decided on the circumstances surrounding each individual applicant's request, despite the fact that they were impacted by the same conditions affecting the entire industry. *Compare DLU Lighting USA*, OHA Case No. EXC-12-0010 (exception relief denied due to market entry after adverse industry conditions were known and after rule promulgated) with *Halco Lighting Technologies*, OHA Case No. EXC-12-0005 (exception relief granted because applicant was already established in the market when rule promulgated and adverse industry conditions began). While the *DLU Lighting* decision contrasts the differences between its applicant and the applicants in *Philips Lighting Company* and its progeny, EXC-12-0001 at 11–12, the *Halco Lighting Technologies* decision highlights the similarities, EXC-12-0005 at 12–14.

Absent some universally applicable condition, we decline to extend relief to an entire business sector. DPI's hardship hardly reflects an industry-wide affliction. If its competitors have similarly experienced delays in their attempts to develop compliant products, they may, of course, apply for exception relief. However, DPI's delays were caused by a breached contract that has no bearing on the battery charger manufacturing industry as a whole. Accordingly, this decision grants exception relief only to DPI.

### III. Remedies

Once it is determined that exception relief is warranted, the exact remedy must be balanced against the national benefits of compliance. *See Dixie Gas & Oil Corp.*, OHA Case No. VEE-0009 at 7 (1995). Remedies should be narrowly tailored to require as much compliance as possible while still addressing the hardship that warrants exception relief in the first place. *See, e.g., id.* at 8. In the instant case, we must determine how many product lines should be excepted from the Standards and for how long.

DPI derives roughly XX% of its net revenue from two noncompliant product lines, 24F020 and 36018. Another XX% of DPI's net revenue is derived from a product line that appears to be compliant (1-48017-04). If it is granted exception relief for product lines 24F020 and 36018, DPI will be able to generate about XX% of its previous revenue. This should be sufficient to alleviate significant hardship to DPI resulting from the Standards while it continues to develop compliant products.

DPI submitted information regarding estimated completion dates for the compliant product lines that will replace its existing product lines. Response at 13. It estimated that the replacement for product line 24F020 would be ready by XXXXXXXX XXXX and that the replacement for product line 36018 would be ready by XXXXXXXX XXXX. We believe that these estimates are reasonable, especially given that a replacement product line slated for XXXXXXXX XXXX completion appears to be on schedule at this time. Second Response.

Balanced against the national benefit of energy efficiency regulations, exception relief for product lines 24F020 and 36018 would not substantially disrupt the ultimate goals of the Standards. The UECs for those product lines are 104% and 106%, respectively, of the maximum allowed UEC. Even with the exception relief ordered in this decision, DPI will come very close to meeting the Standards and consumers will reap the majority of the Standards' intended benefits.

For the foregoing reasons, we approve exception relief for product line 24F020 through December 2019, and for product line 36018 through July 2019. The models included in these product lines are listed in Appendices A and B, respectively, attached to this decision and order.

#### **IV. Conclusion**

It Is Therefore Ordered That:

- (1) The Application for exception filed by Diversified Power International, LLC, on August 9, 2018, is granted in part, as set forth in paragraph (2) below.
- (2) Notwithstanding the June 13, 2018, compliance date of the Energy Conservation Program: Energy Conservation Standards for Battery Chargers, published on June 13, 2016, 81 Fed. Reg. 38265, and codified at 10 C.F.R. 430.32(z), the compliance date of the Final Rule is established as:
  - (a) January 1, 2020, for products listed in Appendix A; and
  - (b) August 1, 2019, for products listed in Appendix B.
- (3) Any person aggrieved by the approval of exception relief in this Decision and Order may file an appeal with the Office of Hearings and Appeals in accordance with part 10 C.F.R. Part 1003.

Poli A. Marmolejos  
Director  
Office of Hearings and Appeals  
**Appendix A**

UL File Number	Product Model Number	Description
1-24F020-04-HF	1QA-24F020Q00-E00	24V 20A HF GEN-IV LED 120V DPI
	1QA-24F020Q04-E01	24V 20A HF GEN-IV LED 120V DPI
	1QA-24F020Q09-E00	24V 20A HF GEN-IV LED 120V DPI
	1QA-24F020Q09-E02	24V 20A HF GEN-IV LED 120V DPI
	1QA-24F020Q09-E12	24V 20A HF GEN-IV LED 120V DPI
	1QB-24F020Q00-E01	24V 20A HF GEN-IV LED 120V DPI
	1QB-24F020Q03-E01	24V 20A HF GEN-IV LED 120V DPI
	1QB-24F020Q03-E02	24V 20A HF GEN-IV LED 120V DPI
	1QB-24F020Q04-E00	24V 20A HF GEN-IV LED 120V DPI
	1QB-24F020Q04-E01	24V 20A HF GEN-IV LED 120V DPI
	1QB-24F020Q04-E02	24V 20A HF GEN-IV LED 120V DPI
	1QB-24F020Q09-E00	24V 20A HF GEN-IV LED 120V DPI
	1QB-24F020Q09-E01	24V 20A HF GEN-IV LED 120V DPI
	1QB-24F020Q09-E02	24V 20A HF GEN-IV LED 120V DPI
	1QB-24F020Q09-E03	24V 20A HF GEN-IV LED 120V DPI



## Appendix B

UL File Number	Product Model Number	Description
1-36018-04	1RA-36F018E00-E00	36V 18A PHAF GEN-IV LED 120V DPI
	1RA-36F018E03-E00	36V 18A PHAF GEN-IV LED 120V DPI
	1RA-36F018E18-E00	36V 18A PHAF GEN-IV LED 120V DPI
	1RA-36F018E22-E00	36V 18A PHAF GEN-IV LED 120V DPI
	1RA-36F018E40-E00	36V 18A PHAF GEN-IV LED 120V DPI
	1RA-36F018E47-E00	36V 18A PHAF GEN-IV LED 120V DPI
	1RA-36F018E98-E00	36V 18A PHAF GEN-IV LED 120V DPI
	1RB-36F018E00-E00	36V 18A PHAF GEN-IV LED 120V DPI
	1RB-36F018E03-E00	36V 18A PHAF GEN-IV LED 120V DPI
	1RB-36F018E18-E00	36V 18A PHAF GEN-IV LED 120V DPI
	1RB-36F018E22-E00	36V 18A PHAF GEN-IV LED 120V DPI
	1RB-36F018E40-E00	36V 18A PHAF GEN-IV LED 120V DPI
	1RB-36F018E47-E00	36V 18A PHAF GEN-IV LED 120V DPI
	1RB-36F018E98-E00	36V 18A PHAF GEN-IV LED 120V DPI